



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 423

[EPA-HQ-OW-2009-0819; FRL-9962-51-OW]

RIN 2040-AF76

Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In response to administrative petitions for reconsideration, the Environmental Protection Agency (EPA) proposes to postpone certain compliance dates in the effluent limitations guidelines and standards for the steam electric point source category under the Clean Water Act (“CWA”), published in the **Federal Register** on November 3, 2015. Specifically, EPA proposes to postpone the compliance dates for the new, and more stringent, best available technology economically achievable (“BAT”) effluent limitations and pretreatment standards for each of the following wastestreams: fly ash transport water, bottom ash transport water, flue gas desulfurization (“FGD”) wastewater, flue gas mercury control wastewater, and gasification wastewater. These compliance dates would be postponed until EPA completes reconsideration of the 2015 Rule.

DATES: Comments on this proposed rule must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OW-2009-0819**, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once

submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Contact Ronald Jordan, United States Environmental Protection Agency, Engineering and Analysis Division; telephone number: (202) 564-1003; email address: jordan.ronald@epa.gov.

Electronic copies of this document and related materials are available on EPA's website at <https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule>.

Copies of this proposed rule are also available at <http://www.regulations.gov>.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Postponement

On November 3, 2015, the EPA issued a final rule amending 40 CFR part 423, the effluent limitations guidelines and standards for the steam electric power generating point source category, under Sections 301, 304, 306, 307, 308, 402, and 501 of the CWA (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361). The amendments addressed and contained limitations and standards on various wastestreams at steam electric power plants: fly ash transport water, bottom ash transport water, flue gas mercury control wastewater, flue gas desulfurization (FGD)

wastewater, gasification wastewater, and combustion residual leachate. Collectively, this rulemaking is known as the “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (“Rule”). For further information on the Rule, see 80 FR 67838 (Nov. 3, 2015).

EPA received seven petitions for review of the Rule. The United States Judicial Panel on Multi-District Litigation issued an order on December 8, 2015, consolidating all of the petitions in the U.S. Court of Appeals for the Fifth Circuit, *Southwestern Electric Power Co., et al. v. EPA*, No. 15-60821.

In a letter dated March 24, 2017, the Utility Water Act Group (“UWAG”)¹ submitted a petition for reconsideration of the Rule and requested that EPA suspend the Rule’s approaching deadlines. UWAG supplemented its petition with additional information in a letter dated April 13, 2017. In a letter dated April 5, 2017, the Small Business Administration (SBA) Office of Advocacy sent EPA a second petition for reconsideration of the Rule, which expressly supports the UWAG’s petition and raises issues that SBA considers are pertinent to small businesses. The petitions raise wide-ranging and sweeping objections to the Rule.² Among other things, the UWAG petition points to new data, claiming that plants burning subbituminous and bituminous coal cannot comply with the rule’s limitations and standards for FGD wastewater through use of EPA’s model technology. EPA wishes to review these data. UWAG also requested that EPA suspend or delay the “rule’s fast-approaching compliance deadlines while EPA works to reconsider and revise, as appropriate, the substantive requirements of the current rule.”

In an April 12, 2017 letter to those who submitted the reconsideration petitions, the

¹ According to the petition, UWAG is a voluntary, ad hoc, unincorporated group of 163 individual energy companies and three national trade associations of energy companies: Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association.

² A copy of each petition and the supplemental information is included in the docket for this rule, Docket ID No. EPA-HQ-OW-2009-0819.

Administrator announced his decision to reconsider the Rule (a copy of this letter is included in the docket for the rule). As explained in that letter, after considering the objections raised in the reconsideration petitions, the Administrator determined that it is appropriate and in the public interest to reconsider the Rule. On April 14, 2017, the EPA requested that the Fifth Circuit hold the case in abeyance while the Agency undertakes reconsideration. On April 24, 2017, the Fifth Circuit granted the motion and placed the case in abeyance.

The earliest compliance date for the new, and more stringent, BAT effluent limitations and pretreatment standards is November 1, 2018, for each of the following wastestreams: fly ash transport water, bottom ash transport water, FGD wastewater, flue gas mercury control wastewater, and gasification wastewater. As UWAG pointed out in its April 13, 2017 letter “a rule of this magnitude and complexity requires substantial time to come into compliance for multiple wastestreams. Detailed studies and planning, followed by large capital expenditures and subsequent installation and testing, are time-consuming.” Companies have been evaluating their compliance options and are reaching the point at which they will be committing funds, incurring costs, or commencing construction to install technologies. In light of these imminent planning and capital expenditures that facilities incurring costs under the Rule will need to undertake in order to meet the compliance deadlines for the new, more stringent limitations and standards in the Rule—which are as early as November 1, 2018, for direct dischargers and no later than November 1, 2018, for indirect dischargers—the Agency views that it is appropriate to postpone the compliance dates of the Rule that have not yet passed. *See* 80 FR 67838, 67863-67868 (Nov. 3, 2015) (discussion of costs of the rule). This will preserve the regulatory status quo with respect to wastestreams subject to the Rule’s new, and more stringent, limitations and standards, while the reconsideration is underway. While EPA is not making any concession of error with respect to the rulemaking, the far-ranging issues contained in the reconsideration petitions

warrant careful and considerate review of the rule, as well as relief from the certain deadlines under the Rule while EPA considers the issues raised by petitioners. The postponement of compliance dates through this action is intended as a temporary, stopgap measure to prevent the unnecessary expenditure of resources until EPA completes reconsideration of the 2015 rule. EPA solicits comments on whether this postponement should be for a specified period of time, for example, two years.

In a separate action, EPA administratively postponed certain compliance dates in the rule pursuant to Section 705 of the Administrative Procedure Act (“APA”), 5 U.S.C. 705, which states that “[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it pending judicial review.” Because Section 705 of the APA authorizes an Agency to postpone the effective date of an action pending judicial review, EPA is undertaking this notice-and-comment rulemaking to postpone certain compliance dates in the rule in the event that the litigation ends, and while the Agency is undertaking reconsideration. These compliance dates would be postponed until EPA promulgates a final rule specifying compliance dates.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review; and, Executive Order 13563:

Improving Regulation and Regulatory Review

This action is not a significant regulatory action as that term is defined in Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, this proposed rule is not subject to requirements of EO 12866 that apply to significant regulatory actions.

B. Paperwork Reduction Act

This proposed rule does not involve any information collection activities subject to the PRA, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under RFA, 5 U.S.C. 601 *et seq.*

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000).

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This proposed rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA previously determined that the environmental health risks or safety risks addressed by the requirements EPA is proposing to postpone do not present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272 note.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This is a proposal to delay action, and it does not change the requirements of the effluent limitations guidelines and standards published in 2015. While the proposed postponement in compliance dates could delay the protection the 2015 rule would afford to all communities, including those impacted disproportionately by the pollutants in certain wastewater discharges, this action will not change any impacts of the 2015 rule when it is fully implemented. The EPA therefore believes it is more appropriate to consider the impact on minority and low-income populations in the context of possible substantive changes as part of any reconsideration of the 2015 rule.

List of Subjects in 40 CFR Part 423

Environmental protection, Electric power generation, Power plants, Waste treatment and disposal, Water pollution control.

Dated: May 25, 2017.

E. Scott Pruitt,

Administrator.

Therefore, 40 CFR Chapter I is proposed to be amended as follows:

PART 423--STEAM ELECTRIC POWER GENERATING POINT SOURCE

CATEGORY

1. The authority citation for part 423 continues to read as follows:

Authority: Secs. 101; 301; 304(b), (c), (e), and (g); 306; 307; 308 and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended; 33 U.S.C. 1251; 1311; 1314(b), (c), (e), and (g); 1316; 1317; 1318 and 1361).

2. Section 423.10 is amended by designating the undesignated paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§423.10 Applicability.

(b) The compliance dates specified in §§ 423.13(g)(1)(i), (h)(1)(i), (i)(1)(i), (j)(1)(i), and (k)(1)(i) and 423.16(e), (f), (g), (h), and (i) are postponed.

3. Section 423.13 is amended by revising the introductory text to read as follows:

§423.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this part must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

For applicability of the requirements in §§ 423.13(g)(1)(i), (h)(1)(i), (i)(1)(i), (j)(1)(i), and (k)(1)(i), see § 423.10(b).

* * * * *

4. Section 423.16 is amended by revising the introductory text to read as follows:

§423.16 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the following pretreatment standards for existing sources (PSES) by July 1, 1984. For applicability of the requirements in §§ 423.16(e), (f), (g), (h), and (i), see § 423.10(b).

* * * * *

[FR Doc. 2017-11221 Filed: 6/5/2017 8:45 am; Publication Date: 6/6/2017]